

ASSEMBLY BILL

No. 1413

**Introduced by Committee on Revenue and Taxation (Bocanegra
(Chair), Gordon, Mullin, Pan, V. Manuel Pérez, and Ting)**

March 19, 2013

An act to amend Sections 19565, 23036, 23701, and 23701d of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1413, as introduced, Committee on Revenue and Taxation. Corporation Tax Law: tentative minimum tax: credits: exempt organizations.

The Corporation Tax Law provides various credits against the taxes imposed by that law, including a credit for qualified expenditures for the production of qualified motion pictures in the state. Existing law provides for a tentative minimum tax and further provides that, except for specified credits, no other credit shall reduce the tax imposed below the tentative minimum tax.

This bill would additionally allow, for taxable years beginning on or after January 1, 2011, the credit for qualified expenditures for the production of qualified motion pictures to reduce the tentative minimum tax. This bill would make findings related to the public purpose served by the bill.

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law establishes a streamlined method by which organizations that have obtained a ruling or determination from the Internal Revenue Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3)

of the Internal Revenue Code may obtain exemption from state income taxes, as provided.

This bill would allow an organization that has obtained a ruling or determination from the Internal Revenue Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code to use this streamlined method.

This bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19565 of the Revenue and Taxation Code
2 is amended to read:

3 19565. (a) (1) If an organization is exempt from taxation
4 under Section 23701 for any taxable year, the application filed by
5 the organization with respect to which the Franchise Tax Board
6 made its determination that the organization was entitled to
7 exemption under Section 23701, together with any papers
8 submitted in support of the application, ~~and any letter or other~~
9 document issued by the Franchise Tax Board, with respect to the
10 application, *and any copy of the notification issued by the Internal*
11 *Revenue Service approving the organization's tax-exempt status*
12 *pursuant to the Internal Revenue Code which is submitted by the*
13 *organization to the Franchise Tax Board*, shall be open to public
14 inspection. After the application of any organization has been
15 opened to public inspection under this subdivision, the Franchise
16 Tax Board shall, on the request of any person with respect to the
17 organization, furnish a statement indicating the section which it
18 has been determined describes the organization.

19 ~~(2) If an organization is exempt from taxation for any taxable~~
20 ~~year pursuant to subdivision (c) of Section 23701d, any documents~~
21 ~~submitted to the Franchise Tax Board to verify the organization's~~
22 ~~federal exemption under Section 501(c)(3) of the Internal Revenue~~
23 ~~Code, including any copy of the notification issued by the Internal~~
24 ~~Revenue Service approving the organization's tax-exempt status~~
25 ~~pursuant to Section 501(c)(3) of the Internal Revenue Code which~~
26 ~~is submitted by the organization to the Franchise Tax Board, and~~

1 ~~the acknowledgment letter or other document issued by the~~
2 ~~Franchise Tax Board, shall be open to public inspection.~~

3 ~~(3)~~

4 (2) Any inspection under paragraph (1) ~~or (2) of this subdivision~~
5 may be made at times, and in the manner, as the Franchise Tax
6 Board shall by regulation prescribe.

7 (b) Upon request of the organization submitting any supporting
8 papers described in subdivision (a), the Franchise Tax Board shall
9 withhold from public inspection any information contained therein
10 which it determines relates to any trade secret, patent, process,
11 style of work, or apparatus, of the organization, if it determines
12 that public disclosure of the information would adversely affect
13 the organization. The Franchise Tax Board shall withhold from
14 public inspection any information contained in supporting papers
15 described in subdivision (a) the public disclosure of which it
16 determines would adversely affect the national defense.

17 (c) The Franchise Tax Board may impose a reasonable charge
18 for supplying any information the disclosure of which is permitted
19 under this section.

20 SEC. 2. Section 23036 of the Revenue and Taxation Code is
21 amended to read:

22 23036. (a) (1) The term “tax” includes any of the following:

23 (A) The tax imposed under Chapter 2 (commencing with Section
24 23101).

25 (B) The tax imposed under Chapter 3 (commencing with Section
26 23501).

27 (C) The tax on unrelated business taxable income, imposed
28 under Section 23731.

29 (D) The tax on S corporations imposed under Section 23802.

30 (2) The term “tax” does not include any amount imposed under
31 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
32 of subdivision (f) of Section 24667.

33 (b) For purposes of Article 5 (commencing with Section 18661)
34 of Chapter 2, Article 3 (commencing with Section 19031) of
35 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
36 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
37 and for purposes of Sections 18601, 19001, and 19005, the term
38 “tax” also includes all of the following:

39 (1) The tax on limited partnerships, imposed under Section
40 17935, the tax on limited liability companies, imposed under

1 Section 17941, and the tax on registered limited liability
2 partnerships and foreign limited liability partnerships imposed
3 under Section 17948.

4 (2) The alternative minimum tax imposed under Chapter 2.5
5 (commencing with Section 23400).

6 (3) The tax on built-in gains of S corporations, imposed under
7 Section 23809.

8 (4) The tax on excess passive investment income of S
9 corporations, imposed under Section 23811.

10 (c) Notwithstanding any other provision of this part, credits are
11 allowed against the “tax” in the following order:

12 (1) Credits that do not contain carryover provisions.

13 (2) Credits that, when the credit exceeds the “tax,” allow the
14 excess to be carried over to offset the “tax” in succeeding taxable
15 years, except for those credits that are allowed to reduce the “tax”
16 below the tentative minimum tax, as defined by Section 23455.
17 The order of credits within this paragraph shall be determined by
18 the Franchise Tax Board.

19 (3) The minimum tax credit allowed by Section 23453.

20 (4) Credits that are allowed to reduce the “tax” below the
21 tentative minimum tax, as defined by Section 23455.

22 (5) Credits for taxes withheld under Section 18662.

23 (d) Notwithstanding any other provision of this part, each of
24 the following applies:

25 (1) ~~No~~A credit may *not* reduce the “tax” below the tentative
26 minimum tax (as defined by paragraph (1) of subdivision (a) of
27 Section 23455), except the following credits:

28 (A) The credit allowed by former Section 23601 (relating to
29 solar energy).

30 (B) The credit allowed by former Section 23601.4 (relating to
31 solar energy).

32 (C) The credit allowed by former Section 23601.5 (relating to
33 solar energy).

34 (D) The credit allowed by Section 23609 (relating to research
35 expenditures).

36 (E) The credit allowed by former Section 23609.5 (relating to
37 clinical testing expenses).

38 (F) The credit allowed by Section 23610.5 (relating to
39 low-income housing).

1 (G) The credit allowed by former Section 23612 (relating to
2 sales and use tax credit).

3 (H) The credit allowed by Section 23612.2 (relating to enterprise
4 zone sales or use tax credit).

5 (I) The credit allowed by former Section 23612.6 (relating to
6 Los Angeles Revitalization Zone sales tax credit).

7 (J) The credit allowed by former Section 23622 (relating to
8 enterprise zone hiring credit).

9 (K) The credit allowed by Section 23622.7 (relating to enterprise
10 zone hiring credit).

11 (L) The credit allowed by former Section 23623 (relating to
12 program area hiring credit).

13 (M) The credit allowed by former Section 23623.5 (relating to
14 Los Angeles Revitalization Zone hiring credit).

15 (N) The credit allowed by former Section 23625 (relating to
16 Los Angeles Revitalization Zone hiring credit).

17 (O) The credit allowed by Section 23633 (relating to targeted
18 tax area sales or use tax credit).

19 (P) The credit allowed by Section 23634 (relating to targeted
20 tax area hiring credit).

21 (Q) The credit allowed by *former* Section 23649 (relating to
22 qualified property).

23 (R) *For taxable years beginning on or after January 1, 2011,*
24 *the credit allowed by Section 23685 (relating to qualified motion*
25 *pictures).*

26 (2) ~~No~~A credit against the tax may *not* reduce the minimum
27 franchise tax imposed under Chapter 2 (commencing with Section
28 23101).

29 (e) Any credit which is partially or totally denied under
30 subdivision (d) is allowed to be carried over to reduce the “tax”
31 in the following year, and succeeding years if necessary, if the
32 provisions relating to that credit include a provision to allow a
33 carryover of the unused portion of that credit.

34 (f) Unless otherwise provided, any remaining carryover from a
35 credit that has been repealed or made inoperative is allowed to be
36 carried over under the provisions of that section as it read
37 immediately prior to being repealed or becoming inoperative.

38 (g) Unless otherwise provided, if two or more taxpayers share
39 in costs that would be eligible for a tax credit allowed under this

1 part, each taxpayer is eligible to receive the tax credit in proportion
2 to his or her respective share of the costs paid or incurred.

3 (h) Unless otherwise provided, in the case of an S corporation,
4 any credit allowed by this part is computed at the S corporation
5 level, and any limitation on the expenses qualifying for the credit
6 or limitation upon the amount of the credit applies to the S
7 corporation and to each shareholder.

8 (i) (1) With respect to any taxpayer that directly or indirectly
9 owns an interest in a business entity that is disregarded for tax
10 purposes pursuant to Section 23038 and any regulations thereunder,
11 the amount of any credit or credit carryforward allowable for any
12 taxable year attributable to the disregarded business entity is limited
13 in accordance with paragraphs (2) and (3).

14 (2) The amount of any credit otherwise allowed under this part,
15 including any credit carryover from prior years, that may be applied
16 to reduce the taxpayer's "tax," as defined in subdivision (a), for
17 the taxable year is limited to an amount equal to the excess of the
18 taxpayer's regular tax (as defined in Section 23455), determined
19 by including income attributable to the disregarded business entity
20 that generated the credit or credit carryover, over the taxpayer's
21 regular tax (as defined in Section 23455), determined by excluding
22 the income attributable to that disregarded business entity. ~~No A~~
23 credit is *not* allowed if the taxpayer's regular tax (as defined in
24 Section 23455), determined by including the income attributable
25 to the disregarded business entity is less than the taxpayer's regular
26 tax (as defined in Section 23455), determined by excluding the
27 income attributable to the disregarded business entity.

28 (3) If the amount of a credit allowed pursuant to the section
29 establishing the credit exceeds the amount allowable under this
30 subdivision in any taxable year, the excess amount may be carried
31 over to subsequent taxable years pursuant to subdivisions (d), (e),
32 and (f).

33 (j) (1) Unless otherwise specifically provided, in the case of a
34 taxpayer that is a partner or shareholder of an eligible pass-through
35 entity described in paragraph (2), any credit passed through to the
36 taxpayer in the taxpayer's first taxable year beginning on or after
37 the date the credit is no longer operative may be claimed by the
38 taxpayer in that taxable year, notwithstanding the repeal of the
39 statute authorizing the credit prior to the close of that taxable year.

1 (2) For purposes of this subdivision, “eligible pass-through
2 entity” means any partnership or S corporation that files its return
3 on a fiscal year basis pursuant to Section 18566, and that is entitled
4 to a credit pursuant to this part for the taxable year that begins
5 during the last year a credit is operative.

6 (3) This subdivision applies to credits that become inoperative
7 on or after the operative date of the act adding this subdivision.

8 SEC. 3. Section 23701 of the Revenue and Taxation Code is
9 amended to read:

10 23701. Organizations which are organized and operated for
11 nonprofit purposes within the provisions of a specific section of
12 this article, or are defined in Section 23701h (relating to certain
13 title-holding companies) or Section 23701x (relating to certain
14 title-holding companies), are exempt from taxes imposed under
15 this part, except as provided in this article or in Article 2
16 (commencing with Section 23731) of this chapter, if:

17 (a) An application for exemption is submitted in the form
18 prescribed by the Franchise Tax Board; and

19 (b) A filing fee of twenty-five dollars (\$25) is paid with each
20 application for exemption filed with the Franchise Tax Board after
21 December 31, 1969; and

22 (c) The Franchise Tax Board issues a determination exempting
23 the organization from tax.

24 ~~This section shall not prevent a determination from having~~
25 ~~retroactive effect and does not prevent the issuance of a~~
26 ~~determination with respect to a domestic organization which was~~
27 ~~in existence prior to January 1, 1970, and exempt under prior law~~
28 ~~without the submission of a formal application or payment of a~~
29 ~~filing fee. For the purpose of this section, the term “domestic”~~
30 ~~means created or organized under the laws of this state.~~

31 (d) (1) *Notwithstanding subdivisions (a), (b), and (c), an*
32 *organization organized and operated for nonprofit purposes in*
33 *accordance with Section 23701a, 23701d, 23701e, 23701f, or*
34 *23701g shall be exempt from taxes imposed by this part, except*
35 *as provided in this article or in Article 2 (commencing with Section*
36 *23731), upon its submission to the Franchise Tax Board of one of*
37 *the following:*

38 (A) *A copy of the determination letter or ruling issued by the*
39 *Internal Revenue Service recognizing the organization’s exemption*
40 *from federal income tax under Section 501(a) of the Internal*

1 *Revenue Code, as an organization described in Section 501(c)(3),*
2 *(c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code.*

3 *(B) A copy of the group exemption letter issued by the Internal*
4 *Revenue Service that states that both the central organization and*
5 *all of its subordinates are tax-exempt under Section 501(c)(3),*
6 *(c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code and*
7 *substantiation that the organization is included in the federal group*
8 *exemption letter as a subordinate organization.*

9 *(2) (A) Upon receipt of the documents required in subparagraph*
10 *(A) or (B) of paragraph (1), the Franchise Tax Board shall issue*
11 *an acknowledgment that the organization is exempt from taxes*
12 *imposed by this part, except as provided in this article or in Article*
13 *2 (commencing with Section 23731). The acknowledgment may*
14 *refer to the organization's recognition by the Internal Revenue*
15 *Service of exemption from federal income tax as an organization*
16 *described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of*
17 *the Internal Revenue Code and, if applicable, the organization's*
18 *subordinate organization status under a federal group exemption*
19 *letter. The effective date of an organization's exemption from state*
20 *income tax pursuant to this subdivision shall be no later than the*
21 *effective date of the organization's recognition of exemption from*
22 *federal income tax as an organization described in Section*
23 *501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue*
24 *Code, or its status as a subordinate organization under a federal*
25 *group exemption letter, as applicable.*

26 *(B) Notwithstanding any other provision of this subdivision, an*
27 *organization formed as a California corporation or qualified to*
28 *do business in California that, as of the date of receipt by the*
29 *Franchise Tax Board of the documents required under paragraph*
30 *(1), is listed by the Secretary of State or Franchise Tax Board as*
31 *"suspended" or "forfeited" may not establish its exemption under*
32 *paragraph (1) and shall not receive an acknowledgment referred*
33 *to under subparagraph (A) from the Franchise Tax Board until*
34 *that corporation is listed by the Secretary of State and Franchise*
35 *Tax Board as an "active" corporation.*

36 *(3) If, for federal income tax purposes, an organization's*
37 *exemption from tax as an organization described in Section*
38 *501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue*
39 *Code is suspended or revoked, the organization shall notify the*
40 *Franchise Tax Board of the suspension or revocation, in the form*

1 *and manner prescribed by the Franchise Tax Board. Upon*
2 *notification, the board shall suspend or revoke, whichever is*
3 *applicable, for state income tax purposes, the organization's*
4 *exemption under paragraph (1).*

5 *(4) This subdivision shall not be construed to prevent the*
6 *Franchise Tax Board from revoking the exemption of an*
7 *organization that is not organized or operated in accordance with*
8 *California law, this chapter, or Section 501(c)(3), (c)(4), (c)(5),*
9 *(c)(6), or (c)(7) of the Internal Revenue Code.*

10 *(5) If the Franchise Tax Board suspends or revokes the*
11 *exemption of an organization pursuant to paragraph (3) or (4),*
12 *the exemption shall be reinstated only upon compliance with this*
13 *section, regardless of whether the organization can establish*
14 *exemption under paragraph (1).*

15 *(e) This section shall not prevent a determination from having*
16 *retroactive effect and does not prevent the issuance of a*
17 *determination with respect to a domestic organization which was*
18 *in existence prior to January 1, 1970, and exempt under prior law*
19 *without the submission of a formal application or payment of a*
20 *filing fee. For the purpose of this section, the term "domestic"*
21 *means created or organized under the laws of this state.*

22 ~~The~~
23 *(f) The Franchise Tax Board may issue rulings prescribe rules*
24 *and regulations as are necessary and reasonable to carry out to*
25 *implement the provisions of this article.*

26 SEC. 4. Section 23701d of the Revenue and Taxation Code is
27 amended to read:

28 23701d. (a) A corporation, community chest or trust, organized
29 and operated exclusively for religious, charitable, scientific, testing
30 for public safety, literary, or educational purposes, or to foster
31 national or international amateur sports competition (but only if
32 no part of its activities involved the provision of athletic facilities
33 or equipment), or for the prevention of cruelty to children or
34 animals, no part of the net earnings of which inures to the benefit
35 of any private shareholder or individual, no substantial part of the
36 activities of which is carrying on propaganda or otherwise
37 attempting to influence legislation, (except as otherwise provided
38 in Section 23704.5), and which does not participate in, or intervene
39 in (including the publishing or distribution of statements), any
40 political campaign on behalf of (or in opposition to) any candidate

1 for public office. An organization is not organized exclusively for
2 exempt purposes listed above unless its assets are irrevocably
3 dedicated to one or more purposes listed in this section. Dedication
4 of assets requires that in the event of dissolution of an organization
5 or the impossibility of performing the specific organizational
6 purposes the assets would continue to be devoted to exempt
7 purposes. Assets shall be deemed irrevocably dedicated to exempt
8 purposes if the articles of organization provide that upon
9 dissolution the assets will be distributed to an organization which
10 is exempt under this section or Section 501(c)(3) of the Internal
11 Revenue Code or to the federal government, or to a state or local
12 government for public purposes; or by a provision in the articles
13 of organization, satisfactory to the Franchise Tax Board; that the
14 property will be distributed in trust for exempt purposes; or by
15 establishing that the assets are irrevocably dedicated to exempt
16 purposes by operation of law. The irrevocable dedication
17 requirement shall not be a sole basis for revocation of an exempt
18 determination made by the Franchise Tax Board prior to the
19 effective date of this amendment.

20 (b) (1) In the case of a qualified amateur sports organization—

21 (A) The requirement of subdivision (a) that no part of its
22 activities involves the provision of athletic facilities or equipment
23 shall not apply.

24 (B) That organization shall not fail to meet the requirements of
25 subdivision (a) merely because its membership is local or regional
26 in nature.

27 (2) For purposes of this subdivision, “qualified amateur sports
28 organization” means any organization organized and operated
29 exclusively to foster national or international amateur sports
30 competition if that organization is also organized and operated
31 primarily to conduct national or international competition in sports
32 or to support and develop amateur athletes for national or
33 international competition in sports.

34 ~~(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section~~
35 ~~23701, an organization organized and operated for nonprofit~~
36 ~~purposes in accordance with this section shall be exempt from~~
37 ~~taxes imposed by this part, except as provided in this article or in~~
38 ~~Article 2 (commencing with Section 23731), upon its submission~~
39 ~~to the Franchise Tax Board of one of the following:~~

1 (A) A copy of the determination letter or ruling issued by the
2 Internal Revenue Service recognizing the organization's exemption
3 from federal income tax under Section 501(a) of the Internal
4 Revenue Code, as an organization described in Section 501(c)(3)
5 of the Internal Revenue Code.

6 (B) A copy of the group exemption letter issued by the Internal
7 Revenue Service that states that both the central organization and
8 all of its subordinates are tax-exempt under Section 501(c)(3) of
9 the Internal Revenue Code and substantiation that the organization
10 is included in the federal group exemption letter as a subordinate
11 organization.

12 (2) Upon receipt of the documents required in subparagraph
13 (A) or (B) of paragraph (1), the Franchise Tax Board shall issue
14 an acknowledgment that the organization is exempt from taxes
15 imposed by this part, except as provided in this article or in Article
16 2 (commencing with Section 23731). The acknowledgment may
17 refer to the organization's recognition by the Internal Revenue
18 Service of exemption from federal income tax as an organization
19 described in Section 501(c)(3) of the Internal Revenue Code and,
20 if applicable, the organization's subordinate organization status
21 under a federal group exemption letter. The effective date of an
22 organization's exemption from state income tax pursuant to this
23 subdivision shall be no later than the effective date of the
24 organization's recognition of exemption from federal income tax
25 as an organization described in Section 501(c)(3) of the Internal
26 Revenue Code, or its status as a subordinate organization under a
27 federal group exemption letter, as applicable.

28 (3) If, for federal income tax purposes, an organization's
29 exemption from tax as an organization described in Section
30 501(c)(3) of the Internal Revenue Code is suspended or revoked,
31 the organization shall notify the Franchise Tax Board of the
32 suspension or revocation, in the form and manner prescribed by
33 the Franchise Tax Board. Upon notification, the board shall
34 suspend or revoke, whichever is applicable, for state income tax
35 purposes, the organization's exemption under paragraph (1) of this
36 subdivision.

37 (4) This subdivision shall not be construed to prevent the
38 Franchise Tax Board from revoking the exemption of an
39 organization that is not organized or operated in accordance with
40 this chapter or Section 501(c)(3) of the Internal Revenue Code.

1 ~~(5) If the Franchise Tax Board suspends or revokes the~~
2 ~~exemption of an organization pursuant to paragraph (3) or (4), the~~
3 ~~exemption shall be reinstated only upon compliance with Section~~
4 ~~23701, regardless of whether the organization can establish~~
5 ~~exemption under paragraph (1).~~

6 ~~(d) The Franchise Tax Board may prescribe rules and regulations~~
7 ~~to implement this section.~~

8 SEC. 5. The Legislature finds and declares that the retroactive
9 application of the amendments made to Section 23036 by this act
10 serves a public purpose by attracting equitable tax treatment to
11 taxpayers that are stimulating the economy of the state and does
12 not constitute a gift of public funds within the meaning of Section
13 6 of Article XVI of the California Constitution.